

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

18-cr-108-EAW

v.

ROBERT MORGAN, FRANK GIACOBBE, TODD
MORGAN, AND MICHAEL TREMITI,

Defendants.

**NOTICE OF MOTION FOR AN EXPEDITED HEARING ON THE MOTION TO
INTERVENE AND TO VACATE AND/OR CANCEL THE NOTICE OF PENDENCY**

PLEASE TAKE NOTICE that Proposed Intervenor 59 Union LLC respectfully moves this Court, before the Honorable Elizabeth A. Wolford, United States District Court Judge for the Western District of New York, Kenneth B. Keating Federal Building, 100 State Street, Rochester, New York, for an Order, pursuant to Rule 12(f) of the Local Rules of Criminal Procedure for the Western District of New York, to shorten the briefing schedule set forth in Rule 12(b) of the Local Rules of Criminal Procedure and to hold an expedited hearing with respect to 59 Union LLC's Motion to Intervene and to Vacate and/or Cancel the Notice of Pendency (the "Motion").

An expedited hearing and shortened briefing schedule is required for the reasons set forth in the Declaration of Michael M. Spoleta, Manager of 59 Union LLC, executed on July 12, 2019, which accompanies the Motion and is provided herewith. The United States of America (the "government") has filed a Notice of Pendency against real property owned by 59 Union LLC, which is located at 59 Union Square Boulevard in Chili, New York and is currently being developed into a multi-unit residential apartment complex known as "Union Square Apartments"

(the “Project”). The Project has been very successful to date, but (as described in the Spoleta Declaration) the Notice of Pendency has created confusion for the Project’s primary lender—Canandaigua National Bank (“CNB”)—and the government’s actions are threatening to kill the Project if the Notice of Pendency is not addressed by July 31, 2019, which would result in millions of dollars in losses to innocent investors, CNB, members of the public who have already leased units in buildings that are under construction, and even, potentially, the government. Construction is likely to cease on July 31, 2019 unless the Notice of Pendency is vacated and/or cancelled, as is requested by 59 Union LLC in the Motion.

The Motion therefore must be heard by the Court prior to July 31, 2019. As a result, 59 Union LLC is requesting an Order: (1) granting an expedited hearing and scheduling the Motion to be heard at a date and time prior to July 31, 2019; (2) stating that the Motion is deemed served on all parties to this criminal action as of its filing on the CM/ECF; (3) requiring the filing and service of responsive papers to the Motion, if any, on or before July 18, 2019; (4) requiring the filing and service of reply papers in further support of the Motion, if any, on or before July 23, 2019; and (5) ordering any other or further relief as the Court deems just and proper.

This Motion for An Expedited Hearing is accompanied by the Motion, together with the Motion’s accompanying Declaration of Michael M. Spoleta, Manager of 59 Union LLC, executed on July 12, 2019, and the Memorandum of Law dated July 12, 2019, and a Proposed Order granting an expedited hearing at a date and time to be filled in by the Court, stating that the Motion is deemed served on all parties to this criminal action as of its electronic filing on July 12, 2019, and setting forth the above dates for serving responsive papers.

REQUEST FOR RELIEF

WHEREFORE, for the reasons set forth in this Notice of Motion for an Expedited Hearing on the Motion to Intervene and to Vacate and/or Cancel the Notice of Pendency (the “Motion”), 59 Union LLC respectfully requests that this Court issue an Order: (1) granting the request for an expedited hearing on the Motion and scheduling the Motion to be heard at a date and time prior to July 31, 2019; (2) stating that the Motion is deemed served on all parties to this criminal action as of its filing on the CM/ECF; (3) requiring the filing and service of responsive papers, if any, on or before July 18, 2019; (4) requiring the filing and service of reply papers, if any, on or before July 23, 2019; and (5) ordering any other or further relief as the Court deems just and proper.

Dated: July 12, 2019

BOND, SCHOENECK & KING, PLLC

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